

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEFFREY H BURMA**  
Claimant

**APPEAL NO. 20A-UI-05377-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUSTOMIZED ENVIRONMENTAL  
SOLUTIONS**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 95.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jeffrey Burma filed a late appeal from the April 29, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Burma was discharged on March 4, 2020 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on July 8, 2020. Jeffrey Burma participated and presented additional testimony through Shelley Macek. Mackenzie Harvey represented the employer. Jared Burma was also available as a potential witness for the employer, but did not testify. Exhibits A and B and Department Exhibit D-1 were received into evidence.

**ISSUE:**

Whether there is good cause to treat Jeffrey Burma late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 29, 2020, Iowa Workforce Development mailed the April 29, 2020, reference 01, decision to Jeffrey Burma at his last-known address of record. The address of record was Mr. Burma's sister's home in Boone, Iowa. Mr. Burma provided the Boone address to IWD when he established the original claim for benefits as the address to which IWD should direct correspondence. Mr. Burma provided the Boone address even though he was not residing at the Boone address and was instead residing in Michigan at all relevant times. Mr. Burma's arrangement with his sister is that she receives and store his mail without opening or reviewing the correspondence and Mr. Burma contacts her to inquire about his mail when he feels the need to do so. At that point, his sister takes a photo of the correspondence and electronically forwards the photo to Mr. Burma.

The April 29, 2020, reference 01, decision arrived at the Boone address of record in a timely manner, prior to the deadline for appeal. The decision disqualified Mr. Burma for benefits. The decision stated that an appeal from the decision must be postmarked by May 9, 2020 or be

received by the Appeal Section by that date. The decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. May 9, 2020 was a Saturday and the next working day was Monday, May 11, 2020. In the absence of an inquiry from Mr. Burma, his sister held onto the unopened correspondence until Mr. Burma inquired about it. Mr. Burma did not make that inquiry until after the extended appeal deadline had passed.

On May 14, 2020, IWD mailed a May 14, 2020 reference 99, decision to Mr. Burma's same address of record in Boone. The reference 99 decision addressed Mr. Burma's eligibility for Federal Pandemic Unemployment Compensation (FPUC), contingent upon his eligibility for regular benefits, Pandemic Unemployment Insurance (PUA), or a few other federal benefit programs. When the May 14, 2020 reference 99, decision arrived at the address in Boone, Mr. Burma and his sister had contact regarding her receipt of the May 14, 2020 reference 99, decision. At that time, Mr. Burma had his sister check his accumulated mail for other IWD correspondence and his sister located the April 29, 2020, reference 01, decision. She took a photo and forwarded the correspondence to Mr. Burma.

On May 28, 2020, Mr. Burma filed an online appeal from the April 29, 2020, reference 01, decision that disqualified him for benefits. The Appeals Bureau received the appeal on May 28, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this

relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One question in this case is whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The weight of the evidence establishes an untimely appeal. The decision was received at the designated address of record in a timely manner, which provided Mr. Burma a reasonable opportunity to file a timely appeal by the extended May 11, 2020. Mr. Burma's decision to provide IWD a Boone mailing address when he was in fact residing in Michigan at all relevant times was unreasonable. Mr. Burma's arrangement for his sister to store his mail until he got around to inquiring about it was unreasonable. Given the arrangement for his sister to receive his mail, and given Mr. Burma's knowledge that one or more IWD decisions regarding his eligibility for benefits would be forthcoming, his failure to maintain regular contact with his sister regarding receipt of time-sensitive correspondence was unreasonable. Mr. Burma unreasonably delayed making inquiry with his sister regarding IWD correspondence until after the appeal deadline has passed. Even after Mr. Burma's sister forwarded the decision to Mr. Burma, he unreasonably delayed action on the matter for a couple more weeks until he finally completed and transmitted an online appeal on May 28, 2020. The late filing of the appeal was wholly and exclusively attributable to Mr. Burma's unreasonable conduct. The late filing of the appeal was not attributable either to IWD or to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). There is no merit to Mr. Burma's assertion that the May 14, 2020, reference 99, decision regarding his eligibility for Federal Pandemic Unemployment Compensation Benefits somehow conveyed there was no need to appeal the

April 19, 2020, reference 01, disqualification decision. In any event, the deadline for appealing the April 19, 2020, reference 01, decision had already passed at the time the May 14, 2020, reference 99 decision was mailed. There is not good cause to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the April 29, 2020, reference 01, decision that disqualified Mr. Burma for benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the April 29, 2020, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 4, 2020 for failure to follow instructions in the performance of his job, remains in effect.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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James E. Timberland  
Administrative Law Judge

August 7, 2020  
Decision Dated and Mailed

jet/mh